

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:07cv184

BORGWARNER, INC. and)	
BORGWARNER TURBO)	
SYSTEMS, INC.,)	
)	
Plaintiffs,)	
)	
vs.)	<u>ORDER</u>
)	
HONEYWELL INTERNATIONAL, INC.,)	
)	
Defendant.)	
)	
_____)	

THIS MATTER is before the Court on the Defendant's Motion to Stay Proceedings Pending Reexamination of the Patents-in-Suit [Doc. 48], filed on March 21, 2008.

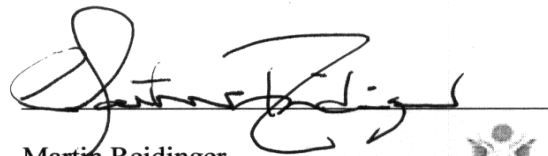
Defendant Honeywell International, Inc. moves to stay the proceedings in this action pending reexamination of the Patents-in-Suit by the United States Patent and Trademark Office (PTO). Defendant filed requests for *ex parte* reexamination of the three Patents-in-Suit with the PTO on March 18, 2008. Defendant argues that there is a "high likelihood that the asserted claims in this litigation will be substantially different, if not

eliminated altogether, as a result of the reexamination." [Defendant's Motion to Stay, Doc. 48 at 1].

Defendant's motion for a stay of these proceedings is premature, as the Defendant's request for a reexamination has not yet been granted by the PTO. It may take as long as three months for the PTO to determine whether a reexamination is even warranted. See 35 U.S.C. § 303(a) ("Within three months following the filing of a request for reexamination . . ., [the PTO] will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request . . .").

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendant's Motion to Stay Proceedings Pending Reexamination of the Patents-in-Suit [Doc. 48] is **DENIED WITHOUT PREJUDICE**, with leave to re-file the same should the PTO grant Defendant's request for a reexamination of the Patents-in-Suit.

Signed: March 24, 2008


Martin Reidinger
United States District Judge

